

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 10-O-07353-LMA
)	
WILLIAM ARTHUR CLOUGH,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 114319,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

In this single client matter, respondent William Arthur Clough was charged with (1) failing to perform legal services with competence; (2) malicious prosecution; and (3) failing to obey a court order. He failed to participate either in person or through counsel, and his default was entered. The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the NDC, and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on September 13, 1984, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 21, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. An undated certified mail receipt was returned to the State Bar bearing a signature that appears to state “William Clough.” The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual knowledge of these disciplinary proceedings, as respondent and the deputy trial counsel (DTC) assigned to this matter communicated about the NDC and proceedings by phone and by email. Specifically, on October 26, 2011, respondent telephoned the assigned DTC. In their phone conversation, respondent and the DTC discussed the NDC and respondent’s options. Thereafter, the DTC sent a follow-up letter to respondent at his official membership records address, which address respondent had confirmed during the course of their October 26th phone call.

On November 21, 2011, the DTC and respondent again spoke by phone. The DTC advised respondent that she would be filing a motion for respondent’s default. Respondent indicated that he was aware of the NDC. But, he also informed the DTC that it was not likely that he would respond to it, due to his need to focus on what the DTC referred to in her

declaration as respondent's "desperate financial circumstances." Thereafter, respondent and the DTC engaged in one final email exchange as a follow-up to their November 21st phone call.

Respondent, in fact, failed to file a response to the NDC. On November 22, 2012, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on December 8, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file a motion to set aside default].) On July 13, 2012, the State Bar filed a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has no other disciplinary investigations pending; (3) respondent has a prior discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on August 8, 2012.

Respondent has a prior record of discipline.³ Pursuant to a Supreme Court order filed on October 21, 2010, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions including a 90-day actual suspension. In this matter, respondent stipulated to two counts of commingling personal funds in a client trust account.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case No. 10-O-07353 (The Mesbah Matter)

Count One (A) – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by: (1) filing an appeal and designating the clerk's transcript, rather than the reporter's transcript, when he was challenging the sufficiency of the evidence on appeal.

Count One (B) – respondent willfully violated rule 3-200(A) of the Rules of Professional Conduct (malicious prosecution) by filing an appeal and designating the clerk's transcript, rather than the reporter's transcript, when he knew or should have known that he could not prevail using the clerk's transcript. By so doing, respondent sought, accepted or continued employment when he knew or should have known that the objective of such employment was to take an

³ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

appeal without probable cause and for the purpose of harassing or maliciously injuring the opposing party.

Count One (C) – respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to pay sanctions as ordered by the appellate court and, thereafter, failing to report the sanctions to the State Bar as ordered by the appellate court.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual knowledge of the proceedings, as prior to the entry of his default he communicated with the assigned DTC by phone and via email about the NDC and the proceedings;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC, deemed admitted by the entry of default, support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent William Arthur Clough be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that William Arthur Clough, State Bar number 114319, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: November ____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court